

## **Comprehensive Model Fundraising Agreement**

### **How to Use this Comprehensive Model Fundraising Agreement**

This model agreement is a tool to assist NPS staff in drafting Comprehensive Fundraising Agreements. For purposes of this document, the term fundraising includes seeking donations of money and in-kind goods and services.

Use this Comprehensive Model Fundraising Agreement to authorize Friends Groups or other NPS partners to undertake a fundraising campaign to support specific NPS projects or programs, such as fundraising for a new visitor center, endowing a park education program, or rehabilitating a trail system. Use the Basic Model Fundraising Agreement to authorize non-recurring fundraising efforts by a partner where the fundraising goal is more than \$25,000 but less than \$100,000, and where funds will not be invested by the partner, e.g., placed in an endowment or investment account. Lastly, use the Model Friends Group Agreement to formalize relationships between the NPS and Friends Groups and to authorize general (not project-specific) fundraising activities for the benefit of NPS, such as annual membership fundraising drives, planned giving activities, and the establishment of donation boxes. All Director's Order No. 21 (DO #21) model agreements may be found in the DO #21 Reference Guide.

A Comprehensive Fundraising Agreement may be used to authorize Partners to raise funds for for park construction and renovation projects, including associated architecture and engineering design services, but a separate Partner Construction Agreement must be executed prior to authorizing a Partner to enter into contracts for, or undertaking, such work.

Bracketed text below provides explanatory information or direction and generally should not be included in a Comprehensive Fundraising Agreement. Some model agreement articles should only be included as necessary. For example, where NPS and a Partner are not authorizing the use of each other's logos or other intellectual property, the intellectual property section should not be included in the agreement.

NPS staff should consult with their Partnership Coordinators, the Washington Partnership Office, and the Solicitor's Office, as appropriate, during the drafting process and prior to finalizing any Fundraising Agreement.

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Agreement Number \_\_\_\_\_

## **FUNDRAISING AGREEMENT**

**Between the**

**NATIONAL PARK SERVICE**

**And**

**[INSERT PARTNER ORGANIZATION(S)]**

This Fundraising Agreement is entered into between the National Park Service (NPS), a bureau of the United States Department of the Interior, and [insert partner name] (Partner) for the purpose of [insert purpose].

### **I. Background**

[The Background Section of the Fundraising Agreement provides the context for the Fundraising Agreement and states the intent of the parties. This information is helpful to have when interpreting provisions of the agreement.

Background information is explained through a series of paragraphs that concisely convey the relevant context, history and facts underpinning the Fundraising Agreement. While there is technically no limit on the length of the Background Section, it generally should not exceed a page and a half, and should include the following information:

- a. Who the parties to the Fundraising Agreement are, e.g., the Partner is a 501(c)(3) organization incorporated and doing business in the State of Montana. The Partners headquarters office is located at [insert address];
- b. A description of what the parties are trying to accomplish, e.g., establish and support an interpretative park program;
- c. A brief history of the relationship between the parties;
- d. Relevant legislation if it exists, e.g., a statute that directs or authorizes the NPS to undertake activities contemplated in the Fundraising Agreement;
- e. The Partner's fundraising goal and a very brief overview of the Partner's proposed fundraising activities. A detailed overview of the Partner's proposed fundraising activities is contained in the Partner's Fundraising Plan, which must be attached to the

Fundraising Agreement. The Director's Order No. 21 (DO 21) Reference Manual describes the content of a Fundraising Plan;

- f. Other facts critical to understanding the Fundraising Agreement; and
- g. An explanation of whether and how existing or related agreements affect the Fundraising Agreement, e.g., does a Friends Group Agreement control the Fundraising Agreement? NPS uses Friends Group Agreements to establish long-term relationships with partner organizations.

[Note: Where a Friends Group Agreement exists it must be incorporated by reference into subsequently executed Fundraising Agreements. When incorporating a Friends Group Agreement, by reference into a Fundraising Agreement, insert the following provision into Article IV.A (below):

“NPS and the Partner have entered into a Friends Group Agreement dated [insert], which is hereby incorporated into this Agreement by reference, and the Friends Group Agreement shall control in the event of any conflict with this Agreement unless expressly stated otherwise in this Agreement.”

Where a Friends Group Agreement has been incorporated by reference into a Fundraising Agreement, there is no need to duplicate provisions which appear in the Friends Group Agreement. Nevertheless, some duplication of provisions may be helpful and convenient for readers of the Fundraising Agreement, and therefore may be included at the discretion of the drafters.]

## **II. Definitions**

[Define meanings of terms of art, critical terms, etc. Do not assume the reader already knows these definitions.]

## **III. Legal Authority**

[NPS must have legal authority both to (1) accept a donation, and (2) expend donated funds or use donated goods and services. Documents such as NPS Director's Orders do not provide legal authority to accept and expend or use donations for specific purposes and should not be cited as legal authority.

Include a provision citing the legal authorities NPS is relying in each Fundraising Agreement. A typical statutory authority provision reads as follows:

**“Legal Authority:** NPS enters into this Fundraising Agreement pursuant to authority provided by (1) the NPS Organic Act (16 U.S.C. §§ 1-4), which authorizes NPS to undertake activities in furtherance of NPS mission objectives; (2) 16 U.S.C. § 6, which authorize NPS to accept donations in furtherance of NPS mission objectives; and (3) 43

U.S.C. § 1473a, which gives the Secretary authority to accept and use contributions for cooperative projects with other Federal, State, or private agencies.”

Where a Partner is another federal, state, or local governmental entity, or is congressionally chartered, the Partner’s legal authority to undertake activities contemplated should also be included in the Legal Authority Section. This information should be provided by the Partner.

The Solicitor’s Office will assist NPS in identifying NPS legal authorities. Also, if the legal authority of a third-party to undertake an activity is unclear, NPS or the Solicitor’s Office may ask the third-party for a legal opinion from its counsel assessing the third-party’s legal authority.

#### **A. Authority to Accept Donations**

NPS’s authority to accept most donations is 16 U.S.C. § 6, which provides as follows:

The Secretary of the Interior in his administration of the National Park Service is authorized, in his discretion, to accept patented lands, rights-of-way over patented lands or other lands, buildings, or other property within the various national parks and national monuments, and moneys that may be donated for the purposes of the national park and monument system.

Depending on the specific situation, NPS may also cite supplemental or alternative statutory authorities that allow NPS to accept specific kinds of donations. Examples of other commonly used NPS legal authorities authorizing acceptance of donations of money, property, goods, and services include the Outdoor Recreation Act (16 U.S.C. §§ 460l-1(f) - 460l-1(h)) and the Historic Sites Act (16 U.S.C. §§ 462, 464). A more comprehensive discussion of NPS-specific authorities and a list of additional available authorities can be found in the Department’s *Partnership Legal Primer*:

[http://www.doi.gov/Partnerships/Partnership\\_legal\\_framework.html](http://www.doi.gov/Partnerships/Partnership_legal_framework.html).

#### **B. Authority to Expend Donated Funds and Use Donated Goods and Services**

Generally, NPS may only expend donated funds for purposes for which appropriated funds may be used. Also, NPS must ensure that its use of donated goods and services is consistent with applicable law.]

### **IV. Responsibilities and Understandings of the Parties**

[The Responsibilities and Understandings Section of a Fundraising Agreement identifies what each party agrees to do individually, and what the parties agree to do jointly. This section also identifies individual and joint understandings regarding implementation of the Fundraising Agreement.

The following recommended provisions were drafted in conformance with NPS DO #21 as well as applicable laws, regulations, and Departmental and government policies. The provisions are not exhaustive and should be tailored in light of relevant facts and circumstances.]

**A. NPS and the Partner jointly agree to --**

1. Work actively and collaboratively to ensure that all current and future NPS DO #21 requirements are met in the implementation and administration of this Fundraising Agreement.
2. Work together in good faith to resolve differences at the organizational level of the Key Officials listed in this Fundraising Agreement prior to elevating matters within the Partner's organization or appealing elsewhere within NPS or the federal government.

[Note: The parties may consider specifying a minimum period for resolving differences prior to elevation, e.g., 30 days from the date written notice of a difference identified by either party is received.]

3. Work actively and collaboratively to ensure implementation of the NPS approved Fundraising Feasibility Study (when required), Fundraising Plan, Donor Recognition Plan, and the Donor Review Process incorporated herein as Attachments [insert].
4. Participate in regular meetings to foster close cooperation on Fundraising Agreement implementation.
5. Work in good faith to execute additional agreements as necessary to meet the mutual objectives of the parties.
6. Make timely decisions on matters necessary for proper implementation and administration of this Fundraising Agreement.

**B. NPS agrees to --**

1. Review proposed donations of in-kind goods and services to ensure that they meet NPS needs, requirements and specifications.
2. Upon receipt of all appropriated and donated funds necessary to undertake activities authorized under this Agreement, NPS will do the following: [list NPS obligations].

[Note: NPS may undertake, or authorize a Partner to undertake, a portion of a project without having funds to implement the entire project, provided that the portion at issue (1) has independent utility to NPS, and (2) can be fully paid for with funds available for this purpose.]

3. Provide the Partner with the Park's Donor Recognition Plan.
4. Review and approve or deny all proposed agreements between a Partner and a third-party that specifically relate to implementation of this Fundraising Agreement.

[Note: For example, a proposed agreement with a firm hired to conduct, or assist the Partner in conducting, fundraising activities would be subject to NPS review and approval because NPS would want to ensure that the proposed agreement conforms to the Fundraising Agreement and NPS' fundraising policies.]

5. Process applications from the Partner for Special Use Permits for proposed in-park activities.
6. Authorize NPS employees to undertake the following activities to support the efforts of the Partner: [List activities, e.g., explaining a proposed project to the Partner's prospective donors at the Partner's fundraising events. See Sections 2.2 and 5.1 of DO # 21 for more information regarding appropriate NPS activities.]

**C. Partner agrees to --**

1. Make a good faith effort to attain the monetary and in-kind fundraising and donation goal(s) identified in this Fundraising Agreement.
2. Consistent with DO #21, expend no more than 20 percent of cash donations raised to cover documented costs incurred by the Partner in association with this fundraising effort.

[Note: NPS and a Partner can agree to a lesser amount.]

3. Separately account for fundraising costs associated with this Fundraising Agreement and those incurred in association with other Partner fundraising efforts.
4. Pay any fundraising consultants or staff, if compensated, a salary or flat fee but not a commission on funds raised, a percentage of contribution, a finder's fee, or a contingent fee.
5. Submit all proposed third-party agreements that specifically relate to implementation of this Fundraising Agreement to NPS for review and approval.
6. Remain fully qualified to seek and receive philanthropic contributions under state and federal law during the term of this Fundraising Agreement.

[Note: Use this provision where a Partner is a non-profit organization. An organization intending to incorporate as a non-profit must do so before the Fundraising Agreement is executed.]

7. Not use its relationship with NPS to benefit third-party interests, including third-parties that are affiliated with the Partner, e.g., non-profit or for-profit subsidiaries.

8. Ensure that all funds and in-kind goods and services obtained in association with the Fundraising Agreement shall solely benefit NPS, unless otherwise agreed to in writing by NPS in this Agreement or otherwise.
9. Consistent with the terms of this Fundraising Agreement, expend funds donated to NPS as follows: [List authorized expenditures, if any, and any associated NPS requirements. This list may also be included as an attachment that is cited in this provision.]
10. Review proposed donations to ensure that they do not give rise to loss of integrity or impartiality, or otherwise reduce public confidence in the Partner or the NPS, or create the appearance of the same.
11. Implement the donor review process contained in Attachment [insert] to this Fundraising Agreement.

[Note: Where a Partner's donor provides a significant donation, the Departmental Manual (374 DM 6) and DO #21 may require review of the donor. Depending on the size of the donation and other factors such as the potential for a conflict of interest, both the NPS and its Partners have responsibilities relating to donor review. Attachment A to this model agreement contains a sample donor review process. The process was drafted for incorporation into Fundraising Agreements with generally large, experienced, organized and long-standing NPS fundraising Partners. NPS staff retains discretion to make the process more prescriptive when donor review will be conducted by less experienced Partners. The Partnership Office, Partnership Coordinators, and the Solicitor's Office can assist with these revisions.]

## **V. Endowments and Investment Accounts, and Annual Work Plans and Budgets**

[An **endowment** is usually a long-term financial instrument established to produce an income stream. The base amount in the endowment (the corpus) is generally not expended, and a portion of annual earnings remains in the endowment account allowing it to grow at a pace that is generally equal to inflation. The remainder of earnings may be expended on projects and programs. In contrast, an **investment account** is a financial instrument established to produce income, but is usually more flexible than an endowment with regard to the expenditure of funds.

The following clauses must be included in any Fundraising Agreement that authorizes a Partner to create an endowment or investment account benefiting NPS. The annual budget process identified in Paragraph H below applies to all funds held by a Partner regardless of the type of account or financial instrument utilized by the Partner.]

- A. The Partner must establish, manage and administer [insert account type(s)] according to a professionally prepared Statement of Investment Policy (Investment Policy) that conforms to applicable legal requirements and ethical standards for non-profit organizations. The Investment Policy will be generated by the Partner and will be

updated by the Partner as necessary. The Investment Policy must be provided to the NPS Key Official upon request.

- B. The Partner must utilize an experienced and credentialed investment advisor to assist the Partner with account management.
- C. Paragraphs A and B of this Article are not intended to grant NPS the ability to interfere in day-to-day Partner financial management decisions.
- D. Consistent with the provisions of Paragraphs A through C of this Article, the Partner will establish and manage a [insert account type(s)] to assist in supporting the purposes of this Fundraising Agreement. The Partner anticipates that [insert amount] will be deposited into the [insert account type(s)] by [insert approximate date or timeframe.]

[Note: If the project or program to be funded with donations will be implemented in stages, consider inserting deposit goals that coincide with anticipated expenditures.]

- E. Account funds must be used for the following category of activities in the following priority order: [Insert prioritized list and describe. Activities funded from multiple accounts may require multiple lists.]
- F. Nothing herein is intended to require depletion of the endowment corpus. Expenditures from an endowment's corpus are only to be undertaken with the written concurrence of NPS.

[Note: Delete this provision if only an investment account, but no endowment, is authorized.]

- G. The amount of funds (including principal, interest, and earnings, as applicable) available for expenditure in a given year will be determined by the Partner with the assistance of its financial advisors. This determination must take into account sound financial management principles and must be consistent with the terms and commitments contained in this Fundraising Agreement and related agreements.
- H. Prior to [insert agreed to date] of each year, NPS and the Partner must jointly develop and enter into a written work plan and budget agreement governing expenditure of any funds held by the Partner in association with this Agreement in the coming year, regardless of the type of account(s) or financial instrument(s) utilized by the Partner. The parties may agree to set aside funds for use in future years. Annual work plans and budgets must be consistent with all terms of this Fundraising Agreement and related agreements executed by the parties. Proposed deviation from a final annual work plans and budget requires the concurrence of both parties in writing.

## **VI. Property Utilization**



## **A. Use of Property other than Intellectual Property**

[If a Partner wishes to use NPS property during the term of a Fundraising Agreement, it must obtain a Special Use Permit or other written authorization from NPS.]

Long-term use of NPS property by Partners, e.g., excess NPS office space, may be authorized through an NPS Friends Group Agreement. Generally, a Friends Group Agreement is utilized where NPS anticipates having a significant, long-term and mutually beneficial relationship with a Partner. The NPS Model Friends Group Agreement is found in the DO #21 Reference Manual, and contains provisions for authorizing the use of NPS property.

NPS must have legal authority to permit Partners to use Government property. In many cases the NPS Organic Act (16 U.S.C. §§ 1-4) provides sufficient legal authority for temporary Partner use of Government property, but NPS staff should consult with the Solicitor's Office to identify applicable legal authorities on a case-by-case basis.]

## **B. Intellectual Property**

[Intellectual property licensing provisions are used where NPS and its Partner are authorizing each other to use their intellectual property in furtherance of Fundraising Agreement goals. Intellectual property provisions address (1) the use of proprietary marks, logos, and taglines, (2) the right to link to websites, or (3) the use and disposition of materials created during the partnership. In unique circumstances either NPS or a Partner may authorize the other to use its intellectual property, and provisions below will need to be modified accordingly. The Solicitor's Office will assist NPS with these modifications.]

### **1. Specific Authorizations to Use Intellectual Property**

- a. As used herein, "Marks" means all trademarks, service marks and corporate and brand identification and indicia, including without limitation word marks, logos and other picture marks, phrases, composite marks, institutional images, look and feel, and identifications of each party, whether registered or not. The parties grant to each other use of their respective Mark(s) during the term of this Agreement, for use solely in connection with this Agreement, and only in the form described and depicted in Attachments [insert] of this Agreement. The license to use Marks does not include the right to use or incorporate the Mark(s) in any other capacity, including collateral marketing, outreach or advertising, or as trade names or internet domain names, without prior written permission.
- b. The parties acknowledge and agree that the parties own or otherwise have the exclusive right to use and to license their respective Marks. All uses of Marks by the parties, including all goodwill arising therefrom, shall inure solely to the benefit of the respective owner. A party retains all rights with respect to its Marks that are not specifically granted to another party. Each party, in its sole discretion,

may object to use of the Marks by another party by providing written notice to the other. A notice recipient shall have five (5) business days to cure the alleged violation identified in the notice or to reach a mutually agreed to resolution with the notice sender. If the matter is not cured or resolved to the satisfaction of the notice sender by the end of the cure period, use of the Mark(s) at issue by the notice recipient shall discontinue immediately.

- c. Each party retains the right to concurrently use and license others to use its Marks anywhere in connection with any purpose.

## **2. Limited License to Use of Trademarks/Tradenames/Taglines/Logos**

- a. All uses by one party of the other party's Marks shall be in accordance with such quality control standards as the licensing party may promulgate from time to time, and each party agrees to refrain from all uses of a licensing party's Marks to which the licensing party objects. All promotional literature and other materials prepared by a party in connection with this Agreement shall bear appropriate copyright and trademark notices as prescribed by the other party, if the other party's content or branding is included therein. Each party agrees that it will not use, register or attempt to register in any jurisdiction, or otherwise appropriate or adopt any name, Mark or logo that is confusingly similar to the other party's Marks. At no time during the term of the Agreement or thereafter shall a Partner attack, challenge or file any application with respect to any NPS Mark. At no time during the term of the Agreement or thereafter shall NPS attack, challenge or file any application with respect to any Partner Mark.
- b. In any identification of either party pursuant to this Agreement, one party shall not impair the branding or other identification of the other party, nor alter or remove any copyright, trademark or other protective notices of such other party.
- c. The parties agree that, except as may be reasonably necessary, they shall not mask, frame, overlay or otherwise materially alter or affect the images, information, perception, service quality or security of the Marks.
- d. All rights, licenses and privileges not expressly granted herein shall remain the sole and exclusive property of the respective parties. Except as provided in this Agreement, upon the termination or expiration of this Agreement (1) all rights conveyed shall cease and revert to the respective party, and (2) each party shall discontinue all use of the other's Marks.
- e. Notwithstanding the foregoing, NPS must review and approve in writing each proposed use of the NPS Arrowhead symbol.

## **3. Rights to Content Created in Furtherance of the Partnership**

For purposes of this Agreement "Background Intellectual Property" means all rights to copyright, trademark, and to other rights owned by a party prior to the

commencement of this Agreement and that are used in the performance of any work under this Agreement. In recognition that each party will be licensing its intellectual property in furtherance of the goals of this Agreement, the following applies to each party as Licensor or Licensee, as the case may be: Licensee acknowledges and agrees that Licensor owns all rights, title and interest in the licensed Background Intellectual Property worldwide, and that Licensee shall not acquire and shall not claim rights in or title to any intellectual property adverse to Licensor. If at any time Licensee acquires (1) any rights in, or trademarks, applications or registration for, any licensed Marks, or (2) copyright ownership in any licensed works, or (3) domain names incorporating any of the licensed Marks, upon Licensor's request and at no expense to Licensor, Licensee shall assign all such rights, applications, registrations, ownership, or domain names to Licensor. Licensee's use of the licensed items shall inure to the benefit of Licensor. Licensee may not challenge the validity of licensed Marks or assert any claim adverse to Licensor.

**4. [Optional] Website Links**

- a. For the term of this Agreement, the parties grant each other permission to provide a hypertext link from their respective websites to the other's website for the limited purpose of achieving the goals of this Agreement. All destination webpages must be reviewed and approved by the other party and must be consistent applicable laws, policies, and with all terms and provisions of this Agreement.
- b. Either party may terminate permission to link to a website at any time, with or without cause, by giving notice in writing. If this permission is terminated, the party receiving the notice must remove the hypertext link within five (5) business days of receipt of notice.
- c. When linking from an NPS webpage to a webpage belonging to the Partner, NPS may require the display of a disclaimer of government endorsement. NPS typically requires a disclaimer where a website contains references to commercially available brands, goods, or services, or where a website is used for advocacy. When display of a disclaimer is required by NPS, the disclaimers must be satisfactory to NPS and may either be continuously displayed or viewed through a pop-up window.

**5. Disposition of Materials Created in Furtherance of this Agreement**

- a. NPS shall own all right, title, and interest in data and materials produced in the performance of this Agreement, including without limitation, b-roll, rough & fine cuts, final products, and derivative works.
- b. Unless otherwise agreed to by NPS in writing, all intellectual property created in association with this Agreement, including without limitation, b-roll, rough & fine

cuts, final products, and derivative works, shall be used by the Partner solely in furtherance of the goals of this Agreement and for internal reporting purposes.

- c. NPS grants the Partner a royalty-free, non-exclusive, non-sublicensable worldwide license to use, reproduce, distribute, transmit and publicly display content in furtherance of the goals of this Agreement and for internal reporting purposes.

[Note: NPS may, as appropriate, expand Partner use rights under a license. However, NPS staff generally may not issue an unrestricted use license to a Partner. The parties must identify and specify acceptable uses.

Partners sometimes ask for joint ownership of created materials. While this is technically possible, NPS lacks resources to effectively monitor Partner use of jointly owned intellectual property. Moreover, this licensing provision should be sufficient to meet the Partner's needs.]

- d. The Partner shall provide NPS with signed releases or license agreements for full use of all stock footage, performers, still photographs, music, and other works secured or acquired by the Partner and used in the creation of materials in association with this Agreement. All performance, release or copyright fees shall be paid by the Partner.

[Note: As a practical matter, Partners sometimes acquire the right to use intellectual property owned by third-parties for short periods of time, and it may be cost prohibitive to permanently transfer these rights to NPS. NPS must evaluate whether to modify the above provision on a case-by-case basis.]

- e. The Partner must obtain NPS' written permission prior to sublicensing the right to use materials to a third-party.

## **VII. Term of the Fundraising Agreement**

[Fundraising agreements may not exceed a term of 5 years. They may be renewed for additional periods of up to 5 years if agreed to by the parties in writing prior to expiration.

If a Friends Group Agreement established the relationship between the parties, the Fundraising Agreement will incorporate the Friends Group Agreement by reference. Therefore, the Fundraising Agreement should run no longer than the term of the Friends Group Agreement. This may require NPS to extend the term of the existing Friends Group Agreement (to the extent permissible under NPS policy), shorten the term of proposed Fundraising Agreement, or modify both. The language below must be used to establish the term of a Fundraising Agreement.]

“Unless earlier terminated under the terms of this Fundraising Agreement, this Fundraising Agreement will be in effect for a period of [insert term not exceeding five (5)

years] beginning on the date the last signature is affixed. This Fundraising Agreement may be extended for a term of [insert term not exceeding five (5) years] by the mutual written agreement of the parties prior to expiration.”

## **VIII. Termination and Expiration**

[The Termination and Expiration Section of a Fundraising Agreement addresses (1) a party’s ability to terminate the Fundraising Agreement, and (2) what happens to donations, including interest and earnings on cash donations, after termination or expiration of the Fundraising Agreement. NPS and its Partner must decide which provisions are appropriate given the facts and circumstances of a particular Fundraising Agreement.]

### **A. Termination**

#### **1. No Fault Termination**

[The following termination clause alternative does not require a “cause” or triggering incident such as breach of the Fundraising Agreement for termination. This clause may be appropriate where the primary function of a Fundraising Agreement is to facilitate philanthropic donations. Depending on the circumstances, NPS and the Partner may choose to lengthen the notice period for termination suggested below.]

“Either party may terminate this Fundraising Agreement for any reason by giving [insert, e.g., 30] days written notice. Unless otherwise provided for in this Fundraising Agreement, neither party shall be liable to the other for any damages, costs or claims in the event of termination. Termination will be effective at the end of the [insert, e.g., 30] day period. Any funds, goods, or services raised for the benefit of NPS, in whole or part, shall be disposed of consistent with the disposition provision found in Article [VIII.B] of this Fundraising Agreement.”

#### **2. Termination for Cause**

[The following clause requires cause for termination. This clause is appropriate where the parties intend to preserve the right to seek judicial or other remedies in the event they are harmed by a material breach of the Fundraising Agreement. Depending on the facts of the situation, the parties may choose to allow the breaching party to cure the breach within a specific amount of time, e.g., 30 days.

While the Department Manual (374 DM 6) states that a termination provision similar to Provision A.1 above may be appropriate for inclusion in Fundraising Agreements, it does not preclude NPS from using the termination provisions discussed below when NPS determines it is appropriate to do so.]

“In the event that either party reasonably believes that the other is in breach of its obligations under this Fundraising Agreement, the complaining party must provide the other party (recipient party) written notice of such alleged breach (notice). The recipient party shall have [insert] days (cure period) after receipt of

the notice to cure such alleged breach, or if the alleged breach cannot be cured within the cure period, the recipient party shall obtain the complaining party's approval of a written remedial plan specifying the recipient party's intent to cure the alleged breach as promptly as is reasonably practical and within a deadline determined by mutual agreement.

In the event that the recipient party fails to cure the alleged breach within the cure period or to diligently pursue the action detailed in the remedial plan, the complaining party may, without first obtaining a judgment or declaration of breach by any court, board, arbitrator or any other adjudicator, terminate this Fundraising Agreement by providing written notice of termination and / or seek any alternative or additional remedies available to it.

Notwithstanding the foregoing, NPS reserves the right to terminate this Fundraising Agreement and forego the cure period when, in NPS' sole judgment, immediate termination is necessary to prevent fraud or malfeasance, to protect public health and safety, or to prevent harm to NPS resources."

**B. Disposition of Assets Upon Termination or Expiration of a Fundraising Agreement or Cessation of Partner Operations**

1. Upon termination or expiration of this Fundraising Agreement, or cessation of Partner operations for any reason, all funds including interest and earnings thereon, and all in-kind contributions held by the Partner for the benefit of NPS or its projects or programs, shall be transferred to NPS or to a third-party deemed acceptable by NPS (under such terms and conditions deemed acceptable by NPS) for use consistent with the purposes for which the donations were made. Nothing herein shall prevent the Partner from satisfying allowable outstanding obligations reasonably incurred in association with this Fundraising Agreement prior to termination or expiration of this Fundraising Agreement.
2. [Note: Include the following provision if the Partner is authorized to establish an endowment.]

In appropriate circumstances, NPS may allow the Partner to continue to manage any endowment established by the Partner for the benefit of NPS or NPS projects or programs after termination or expiration of this Agreement. In this event, endowment fund management shall continue to be subject to the provisions of Article V. of this Agreement. NPS permission to continue operation of an endowment must be in writing and may be terminated by NPS at its discretion. In the event permission to operate an endowment is terminated, endowment funds shall be transferred in accordance with Article VIII.B.1 of this Agreement.

3. The Partner must ensure that its Articles of Incorporation are consistent with the disposition provision of Article [VIII.B.1].

[Note: State laws govern formation and operation of non-profit entities. Some states require that upon dissolution of an organization or its merger with another organization, the organization's remaining assets may be used for the purposes for which they were donated, or they may be given to the federal government, or state or local governments. The organization's Articles of Incorporation should address this issue. Thus it is important that the text of the Partner's Articles of Incorporation is and remains clearly consistent with the disposition provisions of the Fundraising Agreement.]

4. To the greatest extent allowable under law, both parties shall take actions necessary to give full force and effect to the provisions and the intent of this Article.
5. This Article VIII.B shall survive termination or expiration of this Fundraising Agreement.

#### **IX. Key Officials and Notices**

[Key Officials play a very important role in ensuring proper implementation of Fundraising Agreements. Therefore, consideration should be given to whether the Key Officials have the time and expertise necessary to discharge their responsibilities over the full term of the agreement.]

##### **A. Key Official**

The personnel identified below are considered essential to successful coordination and communication between the Partner and NPS for the work to be performed pursuant to this Agreement. Upon written notice to the other party, either party may designate an alternate to act in the place of the designated Key Official, or designate a new Key Official.

##### **For the National Park Service:**

Name:  
Title:  
Address:  
Phone:  
Fax:  
E-mail:

##### **For the Partner:**

Name:  
Title:  
Address:  
Phone:

Fax:

E-mail:

## **B. Notices**

Any notice from one party to the other party with respect to this Agreement shall be in writing and delivered by mail, personal delivery, electronic delivery or other appropriate means, to the first listed Key Official of the other party at the address or contact number indicated above, or at such other address or contact number for such Key Official as may be provided by the other party from time to time, and shall be considered to have been delivered upon receipt at the specified address of such Key Official.

## **XI. Insurance and Liability**

### **A. Insurance**

1. The Partner shall, at its sole cost and expense, maintain during the Term of this Agreement commercial general liability insurance including bodily injury and property damage (including coverage for contractual liability) in adequate amounts of not less than a limit of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate. The general liability policy or policies shall name NPS and the U.S. Department of the Interior as additional insureds. The Partner shall also maintain adequate commercial automobile liability insurance, as well as worker's compensation at statutory limits. The policies shall specify that the insurer shall have no right of subrogation for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the Partner's sole risk.

[Note: The foregoing insurance provision contains NPS's minimum recommended insurance coverage for Partner activities. Depending on the nature of the Partner's proposed activities, the type and amount of insurance coverage required may vary. For example, NPS may choose to allow less coverage if the Partner is not conducting activities in a park. NPS may also require additional insurance, e.g., liquor service insurance for a Partner which intends to provide alcohol at an in-park event. And if a Partner's proposed activity is inherently risky, e.g., providing boat tours from parkland, NPS may require significantly greater insurance coverage.

Occasionally a Partner will hire a third-party to conduct activities on parkland in association with a Fundraising Agreement. For example, a Partner may use donated funds to hire company to film podcasts that the Partner will subsequently donate to a park pursuant to the Fundraising Agreement. The Partner may ask if the third-party's insurance is adequate to meet NPS needs and, if so, whether the Partner may be excused from acquiring insurance itself. Whether NPS grants such requests is a policy decision that should be made in light of potential risks to the government. NPS must be sure that the insurance held by the third-party provides the same level of protection to NPS as insurance NPS would require of



the Partner. NPS may also, as a matter of policy, require that both the Partner and the Partner's contractor carry adequate insurance.

Please contact the WASO Partnership Office for additional assistance regarding insurance provisions. NPS should also encourage Partners to contact their insurance or other risk management professional to assist Partners in identifying appropriate insurance coverage.]

2. The Partner must provide NPS with certificates of insurance evidencing the coverages and limits required herein prior to undertaking any activities within NPS property. NPS may require that insurance coverage be reviewed every two years beginning on the date of purchase of such coverage, and updated or modified if necessary to ensure consistency with generally accepted insurance practices and NPS policies. NPS reserves the right to require the Partner to acquire additional or supplemental insurance, or other forms of security such as bonds, if NPS determines that the Partner's insurance is not adequate to cover liabilities associated with the Partner's activities. NPS must consult with the Partner prior to requiring additional or supplemental insurance or security.
3. The insurance policy or policies shall be payable to the Partner, and the Partner shall use insurance proceeds to correct the damage, harm or deficiency that is the basis of the insurance claim. The Partner's expenditure of insurance proceeds shall be in conformance with law, NPS policies, and NPS approvals. NPS reserves the ability to make insurance claims or to require the transfer of insurance proceeds from a Partner to NPS where, in NPS's judgment, the Partner is unwilling or unable to meet its obligations under this Paragraph. Insurance proceeds that are paid, but that are not needed or cannot be used to correct the harm or deficiency at issue, will, to the extent allowable under the insurance policy, be used to further NPS projects and programs as agreed to by the parties.
4. NPS will not be responsible for any omissions or inadequacies of any insurance coverage and amounts in the event that insurance purchased by the Partner is inadequate or otherwise insufficient for any reason whatsoever. Insurance coverage and other security requirements associated with NPS-authorized occupancy of federal property by the Partner, or NPS-authorized construction, remodeling and associated design activities by the Partner, must be addressed through separate written permits or contracts between the Partner and NPS.
5. Insurance Carrier Requirements
  - a. Each issuer of the insurance required by this Article must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty Edition).

- b. All insurers for all coverage must have a Best's Financial Size Category of at least VII according to the most recent edition of Best's Key Rating Guide (Property-Casualty Edition).
- c. All insurers must be admitted, licensed, and approved to operate in the state (including the District of Columbia and United States Territories, as applicable) in which Agreement related activities will occur.

## B. Liability

1. The Partner assumes liability for and does hereby agree to, save, hold harmless, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys' fees and experts' fees) of any kind and nature whatsoever including fire or other peril, bodily injury, death or real, personal, or intellectual property damage, or claims for bodily injury, death or real, personal or intellectual property damage of any nature whatsoever, and by whomsoever made, in any way arising out of, the activities of the Partner, its employees, agents or contractors (including a contractor's subcontractors) under this Fundraising Agreement. This indemnification shall survive the termination or expiration of this Fundraising Agreement.

[Note: Partners occasionally ask that NPS indemnify them. The Anti-Deficiency Act bars Federal agencies from committing to indemnify Partners. NPS may only be found liable to Partners through processes established in applicable federal law, such as those contained in the Federal Tort Claims Act.

In some cases state law may similarly limited the ability of a state Partner to indemnify NPS. Consult the Solicitor's Office if this issue arises.

Lastly, it should be remembered that a Partner's obligation to indemnify NPS is limited to the extent NPS can be found liable under law. Therefore, a Partner will generally not be liable where, for example, the Government has not waived sovereign immunity to suit.]

2. The Partner must pay the United States the full value of all damages to the lands or other property of the United States caused by the Partner, its employees, agents, representatives, or contractors (including a contractor's subcontractors).
3. The Partner will cooperate with the NPS in the investigation and defense of any claims that may be filed with the NPS arising out of the activities of the Partner, or its agents, representatives, contractors (including a contractor's subcontractors), or employees.

## **XII. Financial Management**

[The following general accounting clauses are designed to account for donations held by a Partner for the benefit of NPS. NPS may want to include additional accounting reporting requirements on a case-by-case basis.]

### **A. In General**

1. The Partner must maintain accounting books and records under a system of accounts and financial controls that is consistent with Generally Accepted Accounting Principles.
2. The Partner must annually provide NPS with a copy of its IRS 990 form.
3. The Partner must permit the Department of the Interior or its designee, including the NPS Comptroller and Office of the Inspector General, to verify and audit any financial audit or records from the books, correspondence, memoranda and other records of the Partner, relating to this Fundraising Agreement, during the period of this Fundraising Agreement, and for such time thereafter as may be necessary to accomplish such verification.
4. The Partner must ensure that if any funds raised under this Fundraising Agreement or related subagreements are commingled with other funds held or managed by the Partner, an accounting system will be utilized which independently tracks and distinguishes funds raised under this Fundraising Agreement or related subagreements from other funds.
5. The Partner must provide NPS with a report discussing progress and challenges in meeting fundraising goals within 90 days of the close of the Partner's fiscal year.

### **B. Financial Audits**

1. Once the Partner raises \$1 million or more in funds for the benefit of NPS during the term of this Fundraising Agreement, the Partner must annually furnish NPS with a financial audit prepared by an independent certified public accountant (CPA) in conformance with Generally Accepted Accounting Principles, during the remaining term of this Fundraising Agreement. The financial audit shall, at a minimum, do the following:
  - a. Comprehensively assess the overall operational and financial position of the Partner;
  - b. Specifically assess the operational and financial position of the Partner with respect to activities authorized by this Agreement or subagreements executed hereunder. Cash donations and interest and earnings thereon, endowment income, pledged donations, in-kind donations, other income, fundraising expenses, expenditures, etc., must be included in this assessment;

- c. Recommend corrective actions where appropriate and note where problems identified in prior year audits persist; and
  - d. Incorporate notes that describe the significant accounting policies used in preparing the financial audit.
- 2. The Partner agrees to take appropriate corrective action based on the audit findings when doing so may further the goals of this Agreement or related agreements.
- 3. The financial audit shall be provided to the Comptroller of the National Park Service and the Superintendent of the affected park within 9 months of the end of the Partner's fiscal year, which ends on [insert] of each year.
- 4. This Article XII.B shall survive termination or expiration of this Fundraising Agreement and shall remain in effect for as long as the Partner holds and manages \$1 million or more in funds for the benefit of NPS.

**XIII. [Optional] Annual Support Assessment**

- A. On [insert date] of each year, the Partner shall provide to NPS a summary of achievements of, and activities undertaken by, the Partner during the prior year in support of the partnership. The Partner shall include in this summary a statement of the Partner's monetary contributions, as well as an assessment of the dollar value of its contributions of in-kind goods or services to NPS. NPS will use this information for internal and external reporting purposes.
- B. On [insert date] of each year, NPS shall provide the Partner with a summary of the achievements of, and activities undertaken by, NPS during the prior year in support of the partnership.
- C. NPS will not generate information for the purpose of federal, state, or local tax assessments. The Partner alone shall be responsible for valuing in-kind goods and services contributed to NPS for tax purposes.]

**XIV. Required Miscellaneous Clauses**

- A. Non-Discrimination: All activities pursuant to or in association with this Agreement shall be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.
- B. NPS Appropriations: Pursuant to 31 U.S.C. § 1341, nothing contained in this Fundraising Agreement shall be construed to obligate the NPS, the Department of the Interior, or the United States to any current or future expenditure of funds in advance of

the availability of appropriations from Congress and their administrative allocation for the purposes of this Agreement. Nor does this Fundraising Agreement obligate the NPS, the Department of the Interior, or the United States to spend funds on any particular project or purpose, even if funds are available.

C. Lobbying with Appropriated Moneys (18 U.S.C. § 1913): No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31. In addition, the related restrictions on the use of appropriated funds found in applicable law also apply.

D. Written Approvals: The Partner shall obtain prior written approval from NPS before:

1. Holding special events on NPS property;
2. Entering into third-party agreements specifically related to implementation of this Fundraising Agreement;
3. Constructing any structure or making any improvements on NPS property;
4. Releasing any information to the public that refers to the Department of the Interior, NPS, the Park, any NPS employee (by name or title), this Fundraising Agreement or the Projects contemplated hereunder; and
5. Using any intellectual property of the Government, including NPS and park specific logos and taglines.

[Note: The above “prior approval” clause is generally used to restate or consolidate prior approval requirements contained in other parts of the Fundraising Agreement. New prior approval requirements may be added here as well. The above examples of prior approvals are representative of prior approval clauses found in many Fundraising Agreements, but they may not be appropriate for inclusion in all Fundraising Agreements. Other clauses may be added when necessary.]

E. Compliance with Applicable Laws: This Fundraising Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether

now in force or hereafter enacted or promulgated. Nothing in this Fundraising Agreement shall be construed as in any way impairing the authority of the NPS to supervise, regulate, and control its property under applicable laws, regulations, and management policies. Nothing in this Fundraising Agreement shall be construed to be inconsistent with or contrary to the purpose or intent of any Act of Congress.

- F. Disclaimers of Government Endorsement: The Partner will not publicize or circulate any materials (including advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting expressly or implicitly that the Government, the Department, NPS, or any Government employee endorses any business, brands, goods or services. Nothing herein is intended to prevent NPS or the Department of the Interior from recognizing the Partnership or contributions made by the Partner to NPS, or from authorizing, on a case-by-case basis, inclusion of such recognition in materials generated by the Partner related to this Fundraising Agreement.
- G. Merger: This Fundraising Agreement, including any attachments, and or documents incorporated by reference, is the sole and entire Fundraising Agreement of the parties.
- H. Modifications: This Fundraising Agreement may be extended, renewed or amended only when agreed to in writing by the NPS and the Partner.
- I. Waiver: If a party fails to exercise any right or to insist that the other party comply with any obligation, no such failure or insistence shall be a waiver of a right of a party to demand strict compliance with each duty or obligation under this Agreement. No custom or practice of the parties which varies from this Agreement shall constitute a waiver of the right of a party to demand exact compliance. Waiver by one party of any particular default by the other party shall not affect or impair a party's rights in connection with any subsequent default of the same or of a different nature, nor shall any delay or omission of a party to exercise any rights arising from such default affect or impair the rights of that party as to such default or any subsequent default. Waivers by one party of any duty or obligation owed by another party must be express and evidenced in writing.
- J. Assignment: No part of this Fundraising Agreement shall be assigned to any third-party without prior written approval of the other party.
- K. Counterparts. This Fundraising Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.

[Note: Sometimes it is logistically difficult for all parties to sign the same copy of an agreement. This clause permits execution through the signature of separate copies of the agreement.]

- L. No Lobbying for Federal Funds: The Partners will not seek appropriations from Congress to support any ongoing or proposed Partner activity or project relating to the subject matter of this Fundraising Agreement or subagreements hereto, including without limitation federal appropriations for construction, renovation, property acquisition, leasing, administration or operations. Nothing in this paragraph is intended to preclude Partners from applying for and obtaining a competitive or non-competitive grant of federal financial assistance from a federal agency or from undertaking otherwise lawful activities with respect to any project or proposal included in the President's budget request to Congress. Nothing in this paragraph should be construed as NPS requesting, authorizing or supporting advocacy by nonfederal entities before Congress.

[Note: This is a required clause in all Fundraising Agreements and cannot be altered.]

- M. Member of Congress: Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
- N. Agency: The Partner is not an agent or representative of the United States, the Department of the Interior, or NPS, nor will the Partner represent its self as such to third parties. NPS employees are not agents of the Partner and will not represent themselves as such to third parties. No joint venture, joint enterprise or other entity is created by this Agreement.
- O. Non-Exclusive Agreement: This Fundraising Agreement in no way restricts either NPS or the Partner from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
- P. No Third-Party Beneficiaries: Unless expressly stated herein, nothing in this Fundraising Agreement is intended to grant any rights or provide any benefits to any third-party.
- Q. Survival: Any and all provisions that, by their terms or otherwise, are reasonably expected to be performed after the expiration or early termination of this Fundraising Agreement, shall survive and be enforceable after the expiration or early termination of this Fundraising Agreement. Any and all liabilities, actual or contingent, that have arisen during the term of this Fundraising Agreement and in connection with this Fundraising Agreement shall survive expiration or termination of this Fundraising Agreement.
- R. Partial Invalidity: If any provision of this Fundraising Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Fundraising Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Fundraising Agreement shall be valid and be enforced to the fullest extent permitted by law.

- S. Captions and Headings: The captions, headings, article numbers and paragraph numbers appearing in this Fundraising Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provision of this Fundraising Agreement, nor in any way affecting this Fundraising Agreement. This provision does not apply to the subheadings found at Article IV.A, Article IV.B, and Article IV.C.
- T. Force Majeure: Neither party shall be liable for failure to perform its obligations under this Fundraising Agreement due to events beyond its reasonable control, including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with or required by any applicable laws or regulations.
- U. Jointly Drafted: This Agreement shall be deemed to have been jointly drafted by both parties and, in the event of a dispute, shall not be construed against either party.
- V. Further Assurances: If requested by one party, the other party shall execute and deliver such other documents and take such other action as may be necessary to effect the terms of this Agreement.
- W. NPS Donation Acceptance: This Agreement assists in ensuring that NPS donation acceptance and the related activities of the parties comply with applicable laws, regulations and government policies. Therefore, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, both parties intend to be legally bound by this Fundraising Agreement.
- X. Disputes and Venue: The parties agree that in the event of a dispute between them, NPS and the Partner shall promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation, or other forms of non-binding alternative dispute resolution that are mutually acceptable to the parties. The parties agree that the venue to commence litigation of any disputes stemming from this Contract shall be a Federal court with appropriate jurisdiction.

#### **XIV. Signatures**

IN WITNESS WHEREOF, the parties have executed this Fundraising Agreement on the date of the last signature set forth below.

\_\_\_\_\_  
[For the National Park Service, Name, Title]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[For the Partner, Name, Title]

\_\_\_\_\_  
Date



[Note: Make sure that DO #21 guidance is followed with respect to appropriate NPS signature levels.]

**XV. Attachments**

[The following is a non-exclusive list of documents should be attached to a Fundraising Agreement.]

Attachment A: Partner Feasibility Study

Attachment B: Partner Fundraising Plan

Attachment C: Donor Recognition Plan

Attachment D: Donation Review Process

Attachment E: Partner Articles of Incorporation

Attachment F: Partner By-Laws

Attachment G: IRS Determination Letter recognizing the Partner's Non-Profit Status (if available)

[Note: NPS staff may request an IRS Determination Letter from a Partner if questions arise regarding the non-profit status of a Partner organization.]